

LYNN MOORE
GREENE vs TYLER TECHNOLOGIES

November 26, 2019

1

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 SUZANNE GREENE,)
5 VS)
6 TYLER TECHNOLOGIES, INC.,)
7 Defendant.)

8
9
10 VIDEOTAPED VIDEOCONFERENCED ORAL DEPOSITION OF

11 LYNN MOORE

12 NOVEMBER 26, 2019

13
14
15 ORAL DEPOSITION OF LYNN MOORE, produced as a
16 witness duly sworn by me at the instance of the
17 Plaintiff, was taken in the above styled and numbered
18 cause on the 26th day of November, A.D., 2019 from
19 10:02 a.m. to 10:26 a.m., before Kellie L. Rowbotham,
20 CSR in and for the State of Texas, reported by
21 stenographic means, at the offices of ReedSmith, LLP,
22 located at 2501 N. Harwood, Suite 1700, Dallas, Texas
23 75201, pursuant to the Federal Rules of Civil
24 Procedure and the provisions stated on the record or
25 attached hereto.

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1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFF:

4 Mr. Matthew W. Herrington (via VTC)
5 DELONG CALDWELL BRIDGERS
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9

10 FOR THE DEFENDANT:

11 Mr. Paulo B. McKeeby
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(469) 680-4299 fax
pmckeeby@reedsmit.com

14

15

16

17 ALSO PRESENT:

18 Ms. Abigail Diaz - In-house Counsel
19 Mr. Cody Madro - Videographer

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1 P R O C E E D I N G S

2 THE REPORTER: Would you like to state
3 any agreements before we go on the video record?

4 MR. MCKEEBY: No. Just taking it
5 pursuant to the Federal Rules of Civil Procedure is
6 our agreement?

7 MR. HERRINGTON: That's right.

8 VIDEOGRAPHER: This is the videotaped
9 deposition of Lynn Moore being held in Dallas, Texas.
10 The time is now 10:02 a.m. on November 26, 2019. We
11 are now on record. At this time will the counsel
12 please introduce themselves and whom they represent,
13 and the witness will then be sworn in.

14 MR. HERRINGTON: I am Matthew
15 Herrington in Atlanta, Georgia by video conference.
16 I represented the Plaintiff Suzanne Greene.

17 MR. MCKEEBY: And I am Paulo McKeeby
18 here in Dallas, and I represent Defendant Tyler
19 Technologies.

20 LYNN MOORE,
21 having been first duly sworn, testified as follows:

22 MR. HERRINGTON: And could we establish
23 who else is present for the deposition?

24 MR. MCKEEBY: Abigail Diaz is present
25 by telephone.

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1 MR. HERRINGTON: I'm sorry. Who is
2 that?

3 MR. MCKEEBY: Ms. Diaz, in-house
4 counsel for Tyler, whom you're familiar, is appearing
5 by telephone.

6 MR. HERRINGTON: Okay.

7 All right, Ms. Rowbotham. Will you
8 please swear in the witness?

9 THE REPORTER: I just did.

10 MR. HERRINGTON: Okay. I didn't catch
11 it. All right. So this is the deposition by
12 cross-examination of Lynn Moore taken in civil action
13 Greene versus Tyler Technologies, Inc., Civil Action
14 1:19-cv-01338 pending in the Northern District of
15 Georgia. My name is Matthew Herrington.

16 EXAMINATION

17 BY MR. HERRINGTON:

18 Q Mr. Moore, you are an attorney, correct?

19 A Yes.

20 Q Okay. Can you tell me where you went to law
21 school?

22 A University of Texas in Austin.

23 Q And what year did you graduate?

24 A 1992.

25 Q And when you left law school what was your

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1 first area of practice?

2 A My first area of practice was litigation.

3 Q Any specific area?

4 A General litigation.

5 Q Any specific employment with litigation
6 experience?

7 A No.

8 Q All right. Any -- what was your first
9 non-litigation position?

10 A I moved to the corporate security section of
11 the law firm I was at.

12 Q All right. And your next non-litigation
13 position?

14 A I was in that position for a little over
15 four years before I went in-house to Tyler
16 Technologies.

17 Q Okay. And you were in-house counsel when
18 you moved to Tyler Technologies?

19 A Yes. I started as general counsel.

20 Q Okay. What year was that?

21 A 1998.

22 Q Do you have any family in Georgia?

23 A No.

24 Q Now, you're familiar with the Beall,
25 B-e-a-l-l, litigation?

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1 A Yes, sir.

2 Q Okay. And that was wage-an-hour litigation
3 filed in 2008, I believe, against Tyler
4 Technologies?

5 A I'm familiar with it. I don't remember the
6 date.

7 Q Okay. You were general counsel at the time
8 of that litigation, correct?

9 A Correct.

10 Q And following the conclusion of that
11 litigation you became general counsel -- I'm sorry --
12 the CEO of Tyler Technologies?

13 A No.

14 MR. MCKEEBY: Object to the form of the
15 question.

16 You can answer.

17 A It was --

18 Q Did you become -- let me rephrase it. Did
19 you become the CEO of Tyler Technologies after the
20 conclusion of the Beall litigation?

21 A Yes.

22 MR. MCKEEBY: Same objection.

23 A Yes.

24 Q Do you have any ownership interest in Tyler
25 Technologies?

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1 A I do.

2 Q Okay. What is that interest?

3 A I own stock. I own some restricted stock
4 units, and I own some options.

5 Q Okay. Can you state what percentage of
6 Tyler stock you own?

7 A It's less than one percent. Very small.

8 Q Excuse me? Less than one percent?

9 A Less than one percent. Very small.

10 Q It is sort of difficult for me to hear you.
11 So, you know, I can make it out most of the time, but
12 I do have lapses where I can't quite make it out.

13 A I'll try to speak up.

14 Q Are you familiar -- are you familiar with
15 the Plaintiff in this case, Suzanne Greene?

16 A Familiar -- I'm familiar there's a lawsuit.
17 I don't know who she is.

18 Q Okay. You've never met her?

19 A No.

20 Q Now, during the course of the Beall
21 litigation Mr. McKeeby -- Paulo McKeeby -- was the
22 counsel for Tyler Technologies, correct?

23 A Correct.

24 Q Okay. And you communicated with Mr. McKeeby
25 during that litigation?

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1 A Yes, I did.

2 Q Okay. Can you state how often that
3 communication occurred?

4 A It was on a -- it was on a regular basis.

5 Q Can you state how frequently?

6 A It was -- it was a multi-year litigation,
7 and I actively participated. It was -- I was engaged
8 actively with Paulo throughout the litigation.

9 Q Did you speak with him more than once a
10 week?

11 MR. MCKEEBY: Object to the form of the
12 question as ambiguous.

13 You can answer.

14 A My recollection is I spoke with him
frequently. There may have been weeks I didn't, but
15 there were plenty of weeks where I spoke with him
multiple times of week, and there would have been
16 weeks I spoke with him every day because I traveled
17 with him.

20 Q Okay. Did you have communication with
21 Mr. McKeeby about the proper classification of any
22 employees at Tyler Technologies as exempt from the
23 FLSA it --

24 THE REPORTER: I'm sorry. Can you say
25 the last part of that again?

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1 Q Did you have any communications with
2 Mr. McKeeby during the Beall litigation about the
3 proper classification of any Tyler Technologies
4 employees as exempt from the FLSA overtime
5 requirements or non-exempt?

6 MR. MCKEEBY: Let me lodge a form
7 objection as to the form of the question. The
8 witness may answer.

9 A Yes. We talked a lot about the exempt
10 non-exemption issue.

11 Q Okay. Can you tell me how often those
12 conversations occurred?

13 A It was -- again, it was somewhat a regular
14 basis. We talked about -- it was on a regular basis.

15 Q Were you having conversations about the case
16 itself or about the perspective decision to continue
17 classifying employees as exempt or non-exempt?

18 A We talked specifically about the case. We
19 talked specifically about the requirements of
20 exemption and non-exemption. We talked specifically
21 about our classifications within Tyler in that
22 context.

23 Q Okay. Which employee specifically did you
24 have conversations with Mr. McKeeby -- excuse me.
25 About which specific employees' classification did

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1 you have communications with Mr. McKeeby?

2 A Are you asking for individual employee
3 names?

4 Q No. I'm asking for positions.

5 A Positions. Well, there were -- to my
6 recollection, there were multiple positions who were
7 asserting claims in the Beall litigation. Some were
8 implementation consultants. Some were support. I
9 believe some were software engineers. There may have
10 been another category, but those are the ones I
11 specifically recall today.

12 Q Mr. Moore, Tyler's -- Tyler Technologies has
13 testified that at the time of the Beall litigation
14 that implementation consultants were not a job
15 category and that there were three other job
16 positions that were later reconfigured as
17 implementation consultants. Is that correct?

18 MR. MCKEEBY: Object to the form of the
19 question.

20 You can answer.

21 A I don't know what anybody's testified in
22 this litigation. I don't -- that's not my
23 recollection. My recollection and understanding is
24 implementation consultants.

25 MR. MCKEEBY: Was the title.

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1 THE WITNESS: Was the title.

2 Q So you're not familiar with three separate
3 positions called trainer, customer liaison and
4 education specialist?

5 A As you say that, I am now familiar with
6 that. To me they were all part of the implementation
7 consultant role.

8 Q So there were three different jobs?

9 A Tell me those positions again. Trainer --

10 Q Customer liaison and education specialist.

11 A My understanding is there may have been some
12 that were class -- that were called that. But it's
13 also my understanding that those are functions that
14 are contained within the implementation consultant
15 role.

16 Q To what degree did the implementation
17 consultant role overlap with those?

18 MR. MCKEEBY: Object to the form of the
19 question.

20 You can answer.

21 A Implementation consultants provide training.
22 Implementation consultants are client liaisons.
23 Implementation consultants do -- I can't remember now
24 the third thing you said.

25 Q Did those three positions have any job

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1 duties that implementation consultants do not have?

2 A I'm not familiar enough with the specific
3 duties of those. They were -- we had different
4 divisions, different companies who may called things
5 differently.

6 MR. MCKEEBY: You've answered his
7 question.

8 Q Did Mr. McKeeby advise you that
9 implementation consultants, or these three
10 positions -- let me back up.

11 Did Mr. McKeeby give you advice about
12 the classification of implementation consultants
13 generally or specific to those three types of
14 implementation consultants?

15 A Mr. McKeeby gave me advice on the exemptions
16 around FLSA and exceptions, and we discussed the
17 roles of various job titles and duties that were part
18 of that lawsuit.

19 Q I'm going to repeat my question. Did you
20 get advice from Mr. McKeeby about the classification
21 of implementation consultants generally or about each
22 specific type of implementation consultant?

23 MR. MCKEEBY: Well, let me lodge
24 another form objection.

25 You can answer.

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1 A Yes. He gave me advice generally. And,
2 yes, we discussed the Plaintiffs in the lawsuits
3 specifically.

4 Q Did you get advice about each of the
5 specific types of implementation consultants
6 individually --

7 MR. MCKEEBY: Object --

8 Q -- rather than -- rather than the
9 implementation consultants generally?

10 MR. MCKEEBY: Object to the form.
11 You're mischaracterizing his testimony about them
12 being specific jobs. He simply said that those
13 duties overlap with what he understood implementation
14 consultants to do, not that they were necessarily
15 distinct positions at Tyler. That's not his
16 testimony.

17 Q Is it not your testimony that trainer,
18 customer liaison position and education specialist
19 position were not three different types of
20 implementation consultants?

21 A I don't know the answer to that. I know
22 that implementation consultants perform those
23 functions.

24 Q Is it correct that Mr. McKeeby's advice to
25 you was never put into writing?

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1 A I don't recall any written -- anything in
2 writing on his legal advice.

3 Q Have you made any attempts to find
4 communications with Mr. McKeeby in writing about the
5 classification of Tyler Technologies' implementation
6 consultants?

7 A Yes.

8 Q What kind of efforts did you make?

9 A Mr. McKeeby asked if I could -- if I had
10 anything in writing, and I searched my files.

11 Q Did you search your e-mails?

12 A Yes.

13 Q Okay. What kind of search did you run on
14 your e-mails?

15 A I used to have a file for litigation
16 matters. There was a file for the FLSA litigation,
17 and I searched to see if there was anything there.

18 Q Okay. What kind of search? Did you
19 manually search through each e-mail? Did you do a
20 key-word search?

21 A I searched to see if the folder was there,
22 and the folder did no longer exist.

Q Okay. So it's been destroyed?

24 MR. MCKEEBY: Object to the form of the
25 question.

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You can answer.

2 A I cleaned out my litigation files when I
3 changed from general counsel to president of the
4 company.

5 Q And the company does not maintain those
6 files on its servers separately from your own
7 computer?

8 A No because -- no. Actually, let me amend
9 that. I don't know. I don't believe so.

10 Q Can you tell me specifically what advice
11 Mr. McKeeby gave to you regarding the classification
12 of implementation consultants?

13 A I recall discussing the administrative
14 exemption, and I recall discussing the general duties
15 of implementation consultants as well as the specific
16 duties of certain Plaintiffs throughout the
17 litigation. And he advised me that they were
18 properly classified as exempt.

19 Q Okay. When you say, "certain Plaintiffs,"
20 there are Plaintiffs in the case that were not
21 implementation consultants, correct?

22 A Correct.

23 MR. MCKEEBY: But your question --

24 Q So you had --

25 MR. MCKEEBY: -- you selected

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1 "implementation consultants," and that was the
2 question he answered.

3 Q So you had conversations about specific
4 implementation consultant Plaintiffs in the case?

5 A Yes.

6 Q Okay. The Beall litigation -- I'll
7 represent to you if you don't recall -- was filed in
8 2008. And I'll represent to you that in
9 Mr. McKeeby's and Morgan Lewis' billing records the
10 only reference to any discussion with you about the
11 classification status of implementation consultants
12 occurred in February of 2011, more than two years
13 after the litigation began. Does that surprise you?

14 A It doesn't surprise me because I don't know
15 why Paulo writes what he writes to invoice.

16 Q Do you know what documents specifically were
17 provided to Mr. McKeeby to determine whether the
18 implementation consultants were exempt or non-exempt?

19 MR. MCKEEBY: Object to the form of the
20 question. Establishes a false predicate.

21 You can answer.

22 A No.

23 Q Did Mr. McKeeby tell you how he came to the
24 decision that the implementation consultants were
25 exempt from the FLSA's overtime requirements?

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1 A We discussed the administrative exemption.
2 I don't -- I mean, I don't -- I mean, I don't recall
3 him telling me what created his decision other than
4 discussing the positions and the -- and the general
5 administrative exemption under the FLSA.

6 Q Are you familiar with the factors that go
7 into the analysis of the FLSA's administrative
8 exemption?

9 A Today I can recall some of it. Back then I
10 was much more familiar.

11 Q Okay. Are you familiar with the part
12 about -- the use of independent judgment and
13 discretion?

14 A Yes.

15 Q Okay. Did Mr. McKeeby go through his
16 analysis with you of the types of independent
17 judgment and discretion that he found that the
18 implementation consultants exercised?

19 A Yes.

20 Q Okay. And can you restate the contents of
21 that analysis for me?

22 A I can't restate it in its totality. I can
23 recall certain discussions. And I would say it's
24 different to say it was just his analysis. It also
25 came from interviewing our people internally to

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1 understand the job functions, talking with HR,
2 understanding exactly specific Plaintiffs, talking in
3 deposition. So there was a lot behind just him
4 providing me analysis. It was just a -- it was a
5 broad -- it was a learning experience within the
6 company.

7 Q Do you know if Mr. McKeeby reviewed any work
8 product from the implementation consultants to see if
9 your job -- their actual job duties were the same as
10 those in the written job descriptions?

11 A I believe so.

12 Q Do you know specifically whether he did that
13 or not?

14 A My recollection is he did. But it's ten
15 years old.

16 Q Okay. Well, what work product did he
17 review?

18 A My recollection is he -- I think he looked
19 at calendars. He looked at training guides. He
20 looked at scheduling. And if work product is also by
21 interviewing witnesses, that was also work product he
22 reviewed.

23 Q I'm talking about written work product
24 produced by implementation consultants during the
25 regular course of their job duties, not during

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1 discussions with Mr. McKeeby. I'm talking about
2 previously-created work product in a typical
3 implementation. Did he review any of that?

4 A My recollection is that he did.

5 Q Okay. And what specific types did he
6 review?

7 A My recollection is he looked at calendars
8 and he looked at training materials that were
9 prepared by implementation consultants on each
10 particular job, things of that nature.

11 Q Did he explain what parts of the training
12 materials created by implementation consultants
13 demonstrated their exercise of discretion and
14 independent judgment?

15 A I don't recall.

16 Q Okay. Did Mr. McKeeby ever have a
17 discussion with you about the meaning of general
18 business activities within the meaning of the FLSA
19 administrative exemption?

20 A Say that term again. General business
21 activities?

22 Q Yes.

23 A I don't -- I don't recall that.

24 Q Okay. Did Mr. McKeeby shadow any of the
25 implementation consultants to watch them do their

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1 jobs?

2 A Are you asking did he go on client sites and
3 watch our people?

4 Q Or on video when they were working by video.

5 A No. Not that I know of.

6 Q So did Mr. McKeeby speak to implementation
7 consultants themselves or only management supervisors
8 and HR?

9 A Both.

10 Q He did speak to implementation consultants
11 themselves?

12 A Sure.

13 Q Do you know with which implementation
14 consultants he spoke with?

15 A I can't specifically name them. But to
16 the -- yeah.

17 Q Well, the three types; trainer, customer
18 liaison and education specialist, can you state with
19 certainty whether he spoke to each type?

20 MR. MCKEEBY: Again, objection. That
21 mischaracterizes his testimony as to duties as
22 opposed to --

23 MR. HERRINGTON: It does not accurately
24 testify the company's testimony.

25 MR. MCKEEBY: I don't think so.

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1 But go ahead.

2 MR. HERRINGTON: I can read it to you
3 if you'd like.

4 MR. MCKEEBY: What are you reading from
5 so that we know?

6 MR. HERRINGTON: Ms. Diaz's 30(b) (6)
7 deposition on behalf of the company.

8 MR. MCKEEBY: Well, whatever Ms. Diaz
9 testified to, this witness has indicated that he has
10 a different understanding as to the difference
11 between job functions and job titles. But if you
12 want to read something into the record, feel free.

13 MR. HERRINGTON: I'm all right.

14 Q Does the company maintain any files on its
15 litigation other than those that were in your own
16 e-mail?

17 MR. MCKEEBY: Object to the form of the
18 question. Vague and ambiguous.

19 You can answer.

20 A I don't believe so.

21 Q That's everything.

22 MR. MCKEEBY: Thank you.

23 MR. HERRINGTON: Thank you.

24 MR. MCKEEBY: No questions at this
25 time.

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1 VIDEOGRAPHER: The time is now 10:26
2 a.m. We are now off record.

3 (End of proceedings.)

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1 REPORTER'S CERTIFICATION

2

3 I, KELLIE L. ROWBOTHAM, a Certified Shorthand
4 Reporter in and for the State of Texas, do hereby
5 certify:

6 That the foregoing witness was by me duly sworn;
7 that the deposition was then taken before me at the
8 time and place herein set forth; that the testimony
9 and proceedings were reported stenographically by me
10 and later transcribed into typewriting under my
11 direction; that the foregoing is a true record of the
12 proceedings had.

13 That before the conclusion of the deposition,
14 the witness has requested a review of this transcript
15 pursuant to Rule 30(e) (1).

16 IN WITNESS WHEREOF, I have subscribed my name
17 this 30th day of November, 2019.

18
19 
20

21 KELLIE L. ROWBOTHAM, Texas CSR 4351
Expiration Date: 12/31/19

22 ESQUIRE DEPOSITION SERVICES
Firm Registration No. 286
23 1700 Pacific Avenue
Suite 1000
24 Dallas, Texas 75201
25 214.257.1436

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1 DEPOSITION ERRATA SHEET

2 Esquire Assignment No. J4649287

3 IN THE UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF GEORGIA
5 ATLANTA DIVISION

6 SUZANNE GREENE,)
7 VS)
8 TYLER TECHNOLOGIES, INC.,)
9 Defendant.)

10 DECLARATION UNDER PENALTY OF PERJURY

11
12
13 I declare under penalty of perjury that I have
14 read the entire transcript of my Deposition taken in
15 the above-captioned matter or the same has been read
16 to me, and the same is true and accurate, save and
17 except for changes and/or corrections, if any, as
18 indicated by me on the DEPOSITION ERRATA SHEET
19 hereof, with the understanding that I offer these
20 changes as if still under oath.

21 Signed on the _____ day of _____,
22 2019.

23
24
25 LYNN MOORE

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1 STATE OF _____)

2 COUNTY OF _____)

3 Before me, _____, on this
4 day personally appeared _____, known
5 to me (or proved to me on the oath of _____

6 or through _____) (description of

7 identity card or other document) to be the person

8 whose name is subscribed to the foregoing instrument
9 and acknowledged to me that he executed the same for
10 purposes and consideration therein expressed.

11

12 Given under my hand and seal of office this

13 _____ day of _____, A.D., 2019.

14

15

16

17

18 _____
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

19

20

21

22

23

24

25

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1 DEPOSITION ERRATA SHEET

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1 DEPOSITION ERRATA SHEET CONTINUED

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23 Page No. _____ Line No. _____ Change to: _____

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25 Reason for change: _____

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